

## REMARKS

With entry of this amendment, claims 1-207 are pending in the application. Claims 68-95, 100-108 and 113-207 are withdrawn from consideration with traverse as being drawn to non-elected subject matter. Claims 1-67, 96-99 and 109-112 are examined on the merits.

### Patentability Under 35 USC § 112, Second Paragraph

Applicants acknowledge that the Office has reconsidered and withdrawn the prior rejection of claims 96-97 under 35 U.S.C. 112, second paragraph.

### Patentability Under 35 USC § 112, First Paragraph

Applicants acknowledge that the Office has reconsidered and withdrawn the prior rejection of claims 1-67, 96-99 and 109-112 under 35 U.S.C. 112, first paragraph.

### Patentability Under 35 USC § 103

For reasons of record, Applicants respectfully submit that the rejection of claims 1-67, 96-99 and 109-112 35 U.S.C. 103(a) as allegedly obvious over Collins (6,264,957) in view of Ball *et al* (J: *Virol.*, 1999, 73:4705-4712), is overcome by the previously-submitted Statement Regarding Common Ownership and Obligation of Assignment, and will be further obviated by the amendment of priority herein, to be perfected upon anticipated grant of a Renewed Petition to Accept Unintentionally Delayed Priority, filed contemporaneously herewith and copied with this submission (see below).

### Double Patenting

Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claim 9 of copending Application No. 09/602,212. Claims 1, 2, 8 and 12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 9-10 of copending Application No. 09/611,829 in view of Collins (6,264,957).

With respect to the double patenting rejection over the '212 application, Applicants note the provisionality of this rejection and respectfully decline to address the merits of the rejection until allowable subject matter is indicated in one of the allegedly conflicting applications, at which time appropriate action will be taken. More specifically, Applicants request allowance of the instant case and redirection of the Office's examination of double patenting issues to the cited, currently pending '212 application, which Applicants confirm are both presently pending without Notice of Allowance.

With respect to the double patenting rejection over the '829 application, Applicants note that this case issued on March 30, 2004 as USPN 6,713,066. To obviate the current double patenting rejection, now regarded as non-provisional, Applicants will promptly prepare and file a Terminal Disclaimer over the '066 patent, under separate cover. This action is to be taken without prejudice, i.e., without acquiescence or representation concerning the merits of the double patenting issues raised by the Office.

#### **Priority**

The amended priority of the application presented herein is believed to fully overcome the objections raised by the Office with regard to priority issues in the application. The priority amendment will be perfected shortly by anticipated grant of a Renewed Petition to Accept Unintentionally Delayed Priority filed contemporaneously herewith and copied with this submission. Prompt anticipated grant of this Petition has been indicated by the Office of Petitions, and the notice thereof will be promptly forwarded to the Examiner for final disposition of this submission.

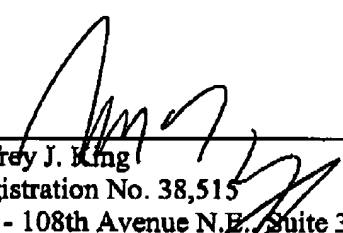
### CONCLUSION

In view of the foregoing, Applicants believe that all claims now pending in this Application will be in condition for allowance upon receipt by the Examiner of the above-referenced Terminal Disclaimer and Notice of Grant of Petition. The issuance of a formal Notice of Allowance at an early date is therefore respectfully requested. If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at (425) 455-5575.

Respectfully submitted,

**GRAYBEAL JACKSON HALEY LLP**

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